and abusive language which caused a severe nervous shock to plaintiff and which she alleges resulted in a nervous disease, damages are not recoverable, as such an injury is not the natural and probable consequence of defendant's act. *Braun* v. *Craven,* 175 Ill. 401, 51 N. E. 657, 42 L. R. A. 199.

DISCOVERY—DISCOVERY AND INSPECTION OF BURIED HUMAN BODY.—In an action to recover damages for the death of one Danahy, who is alleged to have died from injuries received in a collision with defendant's automobile, defendant prays discovery of the body of Danahy to ascertain the cause of his death. Code Civ. Proc., § 803, provides that a court of record has power to compel a party to an action pending therein to produce for inspection any article or property in his possession or under his control relating to the merits of the action or of the defense. *Held,* that the application should be denied. *Danahy* v. *Kellogg* (1910), 126 N. Y. Supp. 444.

In equity the general rule is that a bill will lie by either party to an action at law to have a discovery of matter material to the claim or defense. *Reynolds* v. *Burgess Co.,* 71 N. H. 332, 51 Atl. 1075, 93 Am. St. Rep. 535, 57 L. R. A. 949; *Wilson* v. *Miller,* 104 Va. 446, 51 S. E. 837. In many states statutes have been passed regulating discovery. Some of these acts expressly provide that a bill in equity for discovery shall in no way be affected thereby. *Mahone* v. *Central Bank,* 17 Ga. 111. In case the statute does not so provide, it is held that they do not take away the jurisdiction of the court of equity. *Nixon* v. *Lumber Co.,* 150 Ala. 602, 607, 43 South. 805, 9 L. R. A. (N. S.) 1255; *Post* v. *Toledo etc. Co.,* 144 Mass. 341, 13 N. E. 540, 59 Am. Rep. 86. Contra. *Cleveland* v. *Burnham,* 60 Wis. 16, 17 N. W. 126; *Turnbull* v. *Crick,* 63 Minn. 91, 65 N. W. 135. In other states statutes expressly abolish bills of discovery. *Baylis* v. *Bullock Mfg. Co.,* 59 App. Div. 576, 69 N. Y. Supp. 693. As to what may be the subject matter of discovery, the general rule is that one may have discovery of matter material to the claim or defense. *Wilson* v. *Miller,* supra. In *Reynolds* v. *Burgess,* supra, discovery was had of broken machinery. Facts resting in the knowledge of the defendant, books, papers or copies thereof in his possession may also be the subject of discovery. *Little* v. *Cooper,* 10 N. J. Eq. 273; *Utah Const. Co.* v. *Mont. R. Co.,* 145 Fed. 981. The authorities are in conflict on the question of the power of the court to order a physical examination of a party before trial. By the weight of authority the court may make such an order. *Miami Co.* v. *Baily,* 37 Ohio St. 104; *Wanek* v. *Winona,* 78 Minn. 98, 80 N. W. 851, 46 L. R. A. 448. Contra. *Joliet Ry. Co.* v. *Call,* 143 Ill. 177, 32 N. E. 389; *Stack* v. *N. Y. Ry. Co.,* 177 Mass. 155, 83 Am. Rep. 269, 52 L. R. A. 328. The question in the principal case, whether a human body is a proper subject matter for discovery, came before the United States Circuit Court in *Mut. Life Ins. Co.* v. *Greisa,* 156 Fed. 398, and the court in that case ordered the body to be exhumed for examination.

EVIDENCE—PRESUMPTIONS—LAW OF ANOTHER STATE.—Plaintiff sued defendant to receive the value of his services rendered in the capacity of a physician and surgeon. He did not state in his complaint where the services were rendered. Defendant demurred for the failure of the complaint to

show that plaintiff had a license to practice medicine and surgery as required by Title 82, Sayle's Civ. Stat. of Texas (1897), as amended by Laws of 1901, C. 12. The lower court overruled the demurrer and defendant appealed. *Held*, that the demurrer should have been sustained since under the Texas law, a license to practice is a condition precedent to a recovery of compensation for professional services, and that, even though the services might have been rendered in some other state, in absence of proof to the contrary, it would be presumed that the law of that jurisdiction was the same as that of Texas on that subject. *Swift* v. *Kelly* (1910), — Tex. Civ. App. —, 133 S. W. 901.

As to what presumption should prevail in the courts of one state as to what the law of a sister state is upon a particular subject, in absence of direct proof as to the law of that sister state, seems to be a matter upon which the courts of the several states are in sharp conflict. The court in the principal case cites in support of its position *Gill* v. *Everman*, 94 Tex. 209; *Caledonia Ins. Co.* v. *Wenar*, — Tex. —, 34 S. W. 385. To the same effect may also be cited *Scholten* v. *Barber*, 217 Ill. 148; *Strauss* v. *Am. Ex. Nat'l Bank*, 72 Ill. App. 314; *McIntyre* v. *Boston & M. Ry. Co.*, 163 Mass. 189; *Bresser* v. *Saarman*, 112 Ia. 720; *East Omaha St. Ry. Co.* v. *Godola*, 50 Neb. 906; *Dittman* v. *Distilling Co. of America*, 64 N. J. Eq. 537; *Penn. R. R. Co.* v. *Naive*, 112 Tenn. 239; *Hyde* v. *German Nat'l Bank*, 115 Wis. 170. On the other hand there is a line of authority directly opposed to the doctrine announced in the principal case. These cases deny that any presumption exists as to the law of a sister state. *Kelley* v. *Kelley*, 161 Mass. 111; *Myers* v. *Chicago, St. P., M. & O. Ry. Co.*, 69 Minn. 476; *A. G. Edwards Brokerage Co.* v. *Stevenson*, 160 Mo. 516; *First Nat'l Bank* v. *Nat'l Broadway Bank*, 156 N. Y. 459; *Robb* v. *Washington & Jefferson College*, 185 N. Y. 485; *Meuer* v. *Chicago, M. & St. P. R. R.*, 11 S. D. 94, 74 Am. St. Rep. 774. In two very recent cases, one in the Court of Appeals of Missouri and the other in the Court of Appeals of Kentucky, the conflict of the authorities is again given expression, the Missouri case affirming the doctrine of the principal case (*Biggie* v. *Chicago, B. & Q. Ry. Co.*, — Mo. App. —, 133 S. W. 363), and the Kentucky case supporting the opposite doctrine (*Pittsburg, C. C. & St. L. R. Co.* v. *Grom*, — Ky. —, 133 S. W. 977). Consistently with its position in the last cited case the Kentucky Court has decided that no judicial notice will be taken of the laws of a sister state but that they must be proved in evidence. *Pittsburg C. C. & St. L. Ry. Co.* v. *Austin's Admr's*, — Ky. —, 133 S. W. 780 . As to the construction to be placed on the statute of a sister state almost parallel in wording with the statute of the forum, see *Howe* v. *Ballard*, 133 Wis. 375. The cases already cited affirming or rejecting the doctrine of the principal case all refer to the presumption which should prevail as to the statutory law of a sister state. With respect to the common law, the following hold that in the absence of proof to the contrary the presumption arises that the common law exists and is in force in a sister state. *Charleston & W. C. Ry. Co.* v. *Miller*, 113 Ga. 15; *Schlee* v. *Gluckenheimer*, 179 Ill. 593; *Penn. Mut. Life Ins. Co.* v. *Norcross*, 163 Ind. 379; *Terry* v. *Robbins*, 128 N. C. 140. That the common law in force

in a sister state is presumably the same as that of the forum see *Woolacott* v. *Case,* 63 Kan. 35; *Kelley* v. *Kelley,* 161 Mass. 111; *Hazen* v. *Mathews,* 184 Mass. 388.

HUSBAND AND WIFE—CONSORTIUM—IS HUSBAND'S RIGHT IMPAIRED BY PURELY PHYSICAL INJURY TO WIFE?—Plaintiff's wife had been injured in a trolley car collision caused by the negligence of defendant company. By virtue of c. 114, Conn. Pub. Acts 1877, which gave her practically all the rights of a feme sole, the wife had recovered from the defendant full compensation for her injuries. Plaintiff brought this action for damages to his relative rights due to the wife's injuries. The jury awarded plaintiff the expenses of medical aid, nursing, etc., and $300 "for loss of consortium." On appeal the latter item was disallowed, because the husband had suffered no loss of "consortium" as that term was defined by the court. *Marri* v. *Stamford St. R. Co.* (1911), — Conn. —, 78 Atl. 582. 33 L.R.A.N.S. 104n.

Though it admits that at common law consortium included the right to the wife's services—what it calls the practical, as distinguished from the sentimental, benefits of the marital relation—(COOLEY, TORTS, 471) the court takes the position that by the statute above cited the right to the wife's services was taken from the husband, leaving a residue consisting only of a right to "the society, companionship and affection" of his better half, and that purely physical injury, as distinguished from such torts as alienation of affection and criminal conversation, does not impair this right. This is the doctrine of *Feneff* v. *New York Central, etc. Co.,* 203 Mass. 278, 89 N. E. 436, 133 Am. St. Rep. 291, 24 L. R. A. (N. S.) 1024. In that case the Massachusetts court overruled its decision in *Kelly* v. *N. Y., N. H. & Hartford R. R. Co.,* 168 Mass. 308, 46 N. E. 1063, 60 Am. St. Rep. 397, 38 L. R. A. 631, a case on all fours with the principal case, which held that the husband could recover for the loss of consortium due to a physical injury to the wife. And very respectable courts still hold to the latter view. *Lagergren* v. *National Coke & Coal Co.* (1909), 117 N. Y. Supp. 92; *Elliott* v. *Kansas City,* 210 Mo. 576, 109 S. W. 627; *Mageau* v. *Great Northern Railway Co.,* 103 Minn. 290, 115 N. W. 651, 946, 15 L. R. A. (N. S.) 511. In some states, differences in statutes may reconcile to a certain extent the apparent conflict, (*Indianapolis Traction & Terminal Co.* v. *Menze* (Ind., 1909), 88 N. E. 929, 89 N. E. 370; *Sellick* v. *Janesville,* 104 Wis. 570, 80 N. W. 944, 76 Am. St. Rep. 892, 47 L. R. A. 691) but that there is a real conflict is evident from this language used by the court in the case last cited: "Of a woman bedridden or compelled to move on crutches, suffering severe pain, with shattered nerves, it cannot be said to conclusively appear that [by injury merely physical] her ability is not impaired to render services and assistance, even other than physical, which would otherwise have been within her power,"—though the court concedes that such injury is *less likely* to impair the husband's right of consortium than torts like alienation of affection. It is submitted that the view of the Wisconsin court is preferable to the doctrine of the principal case, which would deny the husband all redress for what in many cases might be grievous injury to his marital rights.